SUPREME COURT
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IN THE

Supreme Court of the United States

DANIEL WRIGHT, *et al.*,
Petitioners,

v.

POTOMAC ELECTRIC POWER COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

May a federal district court rely on its local rule 7(h) and ignore plaintiffs' pleadings, depositions, answers to interrogatories and affidavits when ruling on a summary judgment motion even when the case law of the circuit require that all of these items be considered pursuant to Federal Rule of Civil Procedure 56(c)?

PARTIES TO THE PROCEEDING IN THIS COURT

Daniel Wright

George A. Blakeney

Quinton Briscoe

Calvino Stanford

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JURISDICTION

The judgment of the court of appeals was entered on May 24, 2005, and rehearing was denied on July 26, 2005. This Court has jurisdiction under 28 U.S.C. § 1254(1)

RULE INVOLVED

The pertinent part of Federal Rule of Civil Procedure 56 is reproduced at page 27a of the Appendix.

STATEMENT OF THE CASE

This case involves four African-American men. Three of them, George Blakeney, Calvino Stanford and Quinton Briscoe are presently employed by Potomac Electric Power Company and one, Daniel Wright was discharged by the company in 2002 and has found employment elsewhere.

In 2003 these petitioners filed a complaint alleging discrimination in employment against Potomac Electric Power Company (pepco) and discrimination by their bargaining unit, Local #1900 of International Brotherhood of Electrical Workers (IBEW) for failing to file a grievance against the discrimination.

At the close of discovery, pepco and IBEW filed Motions for summary judgment. Petitioners filed their opposition which included answers to interrogatories, the second amended complaint and affidavits. These documents were cited in their statement of facts disputing the allegations contained in defendants' alleged material facts to which there were no genuine issues for trial. The district court granted summary judgment in favor of both pepco and IBEW and against petitioners.

In its Memorandum Opinion the district court deemed the facts contained in defendants' statements of material facts as admitted. (App.3, n2) and disregarded or ignored plaintiffs' disputed facts which were supported by materials in the record. The district court also made two findings which are misstatements of the record. First the court characterizes Jim Roddy, the white man who kicked George Blakeney as an independent contractor. (App.5). This is based, according to the court, on plaintiffs' second amended complaint. Nowhere do plaintiffs refer to Jim Roddy as an independent contractor in their pleadings. This statement is significant because as an independent contractor, pepco would not be liable for the actions of an independent contractor. However, Jim Roddy was a contract worker, not an independent contractor and pepco would be liable for his actions.

The district court also states that George Blakeney conceded the untruth of his allegation about favorable rotation of two white employees. (App. 15). Nowhere does George Blakeney make such a concession. This misstatement goes to

the heart of George Blakeney's complaint which is that the breach of contract resulted in him being discriminated against.

By disregarding the standards for summary judgment contained in Federal Rule of Civil Procedure 56 and making findings based on misstatements of the record, the district court granted summary judgment against petitioners. The court of Appeals upheld the district court's Memorandum Opinion. (App. 24). Thereafter, a petition for rehearing, was denied without opinion. (App. 26).

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW IS INCONSISTENT WITH THE PRINCIPLES IN *PATTERSON*, WHICH MADE PRECEDENCE BINDING UNTIL IT HAS BEEN OVERRULED, AND RELIANCE BY THE COURT ON MATERIAL FACTS NOT SUPPORTED BY THE RECORD JEOPARDIZES THE INTEGRITY OF THE JUDICIAL PROCESS

The petition should be granted because the decision below cannot be reconciled with either the principle or result in *Vasquez v. Hillery*, 474 U.S. 254 (1986) which stated the importance of stare decisis or *Patterson v. McLean Credit Union*, 491 U.S. 164, (1989) which requires lower courts to follow precedence until it has been overruled.

The District of Columbia Circuit has held in *Burke v. Gould*, 286 F.3d 513 (D.C. Cir 2002) that Local Rules "supplement" and shall be construed in harmony with the Federal Rules of Civil Procedure quoting *Frazier v Heebe*, 482 U.S. 641. Indeed, the court in *Burke* stated "the district court is required by Federal Rule of Civil Procedure 56(c) itself to consider the 'pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any in determining whether there is no genuine issue as to a material fact . . ." However, in the present case

the district court relied on Local Rule 7(h) and ignored the factual disputes contained in petitioners' statement of facts. Plaintiffs' statement of facts which referred to parts of the record in their Second Amended Complaint, Answers to Interrogatories and Affidavits created a genuine dispute and would have prevented summary judgment had they been considered.

More specifically, the District of Columbia Circuit has held in *In Re Korean Air Lines Disaster of September 1, 1983*, 829 F.2d 1171 (D.C. Cir. 1987) that "[b]inding precedent for all is set only by the Supreme Court, and for the district courts within a circuit, only by the court of appeals for that circuit". The district court in the present case did not have the authority to disobey the precedent set in *Burke* regarding the standards to use in ruling on a summary judgment motion.

Review is also warranted because the district court assumed the statement of material facts provided by the movants to be true when the movants' statements of material facts misstated the record that was before the court.

The district court's Memorandum Opinion at page 3 n.2 reads

> Plaintiffs' sparse opposition to defendants' motion for summary judgment fail to include "separate concise statement[s] of genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated." LcvR 7(h). Where that is the case, "the court may assume that facts identified by the moving party in its statement of material facts are admitted, unless such a fact is controverted in the statement of genuine issues filed in opposition to the motion." *Id. See Also Carter v. Greenspan*, 304 F. Supp. 2d 12, 21 (D.D.C. 2004); *Farmer v. Hawk-Sawyer*, 69 F.Supp. 2d 1220, 121 n.2 (D.D.C. 1999). Given the scattershot and discursive nature of plaintiffs' factual allegations, the Court has little choice but to rely pri-

marily upon defendants' statement of facts and memorandum in sketching the necessary factual background.

The district court not only relied primarily on defendants' statements of facts. It relied almost exclusively on defendants' statements of facts even when those statements misstated the record that was before the court.

Where the materials contained in the movant's statements of material facts do not support the factual assertions, the court is free to disregard the assertion. *Holtz v. Rockerfeller & Co., Inc.*, 258 F.3d 62 (2nd Cir. 2001). Court will not deem movant's facts admitted when they misstate the record. *Fund For Animals v. Williams*, 246 F. Supp. 2d 27, n.7

At page 5 of the district court's Memorandum Opinion it characterized Jim Roddy, the white man who kicked petitioner, George Blakeney, in the butt as an independent contractor. This was in reliance on defendant pepco's Motion for summary judgment at page 30. Pepco refers to Plaintiffs Second Amended Complaint at ¶¶ 27-28. Neither at paragraphs 27 and 28 or any other place in plaintiffs' complaint do they refer to Jim Roddy as an independent contractor. In subsequent pleadings before the court of appeals, plaintiffs' have disputed pepco's and the district court's characterization of Jim Roddy as an independent contractor and this misstatement has not been challenged by defendants.

At page 15 of the district court's Memorandum opinion it states that George Blakeney conceded the untruth of his allegations about favorable rotation of two white employees during his deposition. This inaccurate statement was disputed by Blakeney. But since the district court chose to ignore petitioner Blakeney's affidavits, Answers to Interrogatories and Complaint based on its decision that Local Rule 7(h) prohibited him from reading these documents, summary judgment was granted against George Blakeney.

The district court cites two cases for its proposition that Local Rule 7(h) controls the standards in granting summary judgment motions. *Carter v. Greenspan*, 304 F. Supp. 2d 13 (D.D.C. 2004) and *Farmer v. Hawk-Sawyer*, 69 F. Supp. 2d 120 (D.D.C. 1999). Both of these are decisions of district courts which are not binding on the other district courts. *See Carter v. Greenspan*, 304 F. Supp. 2d 13, 24 n.10 (D.D.C. 2004) However *Burke v. Gould*, is a circuit court decision which is binding on all inferior courts in that circuit. This difference between what the district court used in reviewing motions for summary judgment and the requirements contained in *Burke* creates uncertainty within the District of Columbia Circuit. This uncertainty makes this case worthy of review and would provide certainty and uniformity within the circuit.

CONCLUSION

For these reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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